

Finances on Divorce or Dissolution

Do I have to go to court to deal with finances?

If you are getting divorced or dissolving your civil partnership, it is likely that you need to resolve financial issues with your ex-spouse partner. There are a number of ways you can do this and court proceedings may be the last resort.

What options do I have before I issue court proceedings to deal with finances?

First and foremost, you should consider talking to your spouse or civil partner directly and trying to agree terms with them. If you are able to agree to terms, you should nonetheless seek legal advice to make sure that the terms you have agreed are fair and reasonable. Once this has been established, the terms you have agreed will be recorded in a document known as a consent order. In due course, the consent order is sent to the court and once approved by the judge, it is sealed and becomes a binding court order. This concludes the divorce process.

If it is not possible to negotiate terms directly with your ex-spouse or civil partner, there are a number of other options available to you as follows:

Mediation:- Attending mediation is a mandatory step if you are considering issuing court proceedings. However, you can attend mediation at an early stage to try and agree terms without the expense of involving lawyers in a significant way. Mediation is a process that allows you and your spouse or civil partner to try and negotiate financial terms in a controlled environment and in the presence of an independent third-party, the mediator. The mediator does not advise either party but is able to facilitate discussion between them with a view to reaching an agreement. At every stage of the mediation process, you should seek legal advice and if terms are agreed within mediation, they are usually concluded by way of a consent order as detailed above.

Negotiation through solicitors:- It can be agreed that you and your spouse or civil partner give full and frank financial disclosure to each other through solicitors and subsequently, the solicitors will seek to negotiate a settlement on your behalf. With this option, you may incur more costs than you would with mediation but if you feel uncomfortable in mediation, this may be a good option for you as it avoids you having to deal with your ex-spouse or civil partner directly. Again, if terms can be agreed between you both through these negotiations, they are concluded by way of a consent order.

Collaborative law:- You and your ex-spouse or civil partner would have to instruct lawyers who have been trained in collaborative law. Both parties would then attend a series of meetings with their respective lawyers, akin to round-table meetings, in order to negotiate terms. You would normally need to sign an agreement to confirm that you are happy to participate in the collaborative process. If it is not possible to reach an agreement during this process, you will both need to instruct separate lawyers to deal with matters as it would not be appropriate for the collaborative lawyers to continue representing you.

Arbitration:- This is a process which allows you and your ex-spouse or civil partner to deal with financial matters in a tailor-made way which carries with it more formalities than any of the above options. You and your spouse would appoint an independent arbitrator to resolve the issues between you. The arbitration process can be limited to just the issues between you or the arbitrator can deal with all matters that need to be dealt with. As it is tailor-made, it is not a standardised process such as the court process, and the timetable for arbitration is likely to be swift as it only takes into account the time limits required by the parties rather than availability of judges. Arbitrators can make a final decision in relation to financial matters and once the written decision is received, it is normally sent to the court in the form of a consent order, to be approved by the court. In most cases, as long as the parties are both legally represented and the decision made by the arbitrator is in accordance with legislation and case law, the court is highly likely to approve the order.

What does the court process involve?

If the above options are not appropriate or successful, you may have to issue court proceedings in order to resolve financial matters. Before you can do this, you are required to attend a mediation information and assessment meeting (MIAM) so that the mediator can be satisfied there are no other options other than court process.

Once the court application is issued, it is broadly divided into three stages. In the first stage, both parties are required to make full and frank financial disclosure and there is an initial hearing during which the judge will make sure that the parties have complied with their respective obligations. The judge will also consider what further information each party must provide to the other and all of the steps which need to be taken to progress matters.

In the second stage of the court process, the parties complete their financial disclosure and then try and enter into direct negotiations through lawyers in order to resolve all the issues. If it is not possible to resolve the issues, there is a second hearing. That hearing is a without prejudice hearing where both parties are required to attend with the sole purpose of attempting to agree final terms. The judge has an involved role in the process and often gives guidance which often ultimately leads to a settlement.

If it is not possible to agree terms by the second stage, then the matter proceeds to the third stage. During this time, both parties must update their financial information and make preparations for a final hearing. At the final hearing, the judge will impose a final order on the parties in the absence of any agreement between them.

What steps you should take now

If you would like more information on Finances on Divorce or Dissolution, then please contact our Family Solicitor, Zharna Sutaria on 020 8429 1010 or by email: zharna.sutaria@vyman.co.uk

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